

Mr. Dick Schulte

May 4, 1984

Eric F. Eisenlauer

Change in Ownership of Mineral Rights

In your memo of April 26, 1984, you ask the following:

"Under Article XIII A, is there a change in ownership when:

1. Under a mining lease with a remaining term of less than 35 years,
 - a. The royalty interest sells
 - b. The lessee changes
2. Under a mining lease with a remaining term of more than 35 years,
 - a. The royalty interest sells
 - b. The lessee changes"

It is our position that the question of whether any of the above described transactions constitute a change in ownership is to be determined by reference to Revenue and Taxation Code Section 61(c) and Rule 462(f) rather than Section 61(a). In this regard, we believe it is irrelevant that the entire mineral deposit may or may not be removed during the remaining lease term. (See attached copy of a memo from Margaret Shedd to Gene Mayer dated March 31, 1982.)

With respect to the transfer of the royalty interest only, there would be no change in ownership in any event. To this effect, see attached copy of a memo from Robert Milam to Ray Rothermel dated December 7, 1979, which we believe is

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applicable to mining leases as well as oil and gas leases. As indicated by the Milan memo, it is the transfer of the reversionary interest of the lessor and not the royalty interest which determines whether a change in ownership has occurred.

To answer your specific questions, when the lessee's interest under a mining lease is transferred, there is a change in ownership if the remaining term of the lease is 35 years or more but not if the remaining term is less than 35 years (Rule 462(f)(1)(A)(ii), (2)(A)(ii)). When the lessor's interest (reversion) under a mining lease is transferred, there is a change in ownership if the remaining term of the lease is less than 35 years, but not if the remaining term is 35 years or more (Rule 462(f)(1)(B)(i), (2)(B)(i)).

EFE:jlh

Attachments

cc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Verne Walton
Legal Section
